

VERMONT AGENCY OF AGRICULTURE, FOOD & MARKETS
CONSUMER PROTECTION AND FOOD SAFETY
Meat Inspection Service
MONTPELIER, VT
Anson Tebbetts, Secretary



MIS DIRECTIVE

Adopted from FSIS Directive 13,000.3, Rev. 2

13,000.3
Rev. 2

12/31/22

RESPONDING IN PHIS TO INDUSTRY APPEAL OF A NONCOMPLIANCE RECORD

I. PURPOSE

A. This directive provides instructions to supervisory personnel responsible for addressing appeals from official meat and poultry establishments, identification (ID) warehouses, and other facilities where VAAFM provides inspection service. The directive provides instructions to supervisory personnel regarding how to respond to an appeal of a noncompliance record (NR) that has been presented to VAAFM by an establishment representative orally, or in writing. The directive also provides instructions to inspection program personnel (IPP) regarding how to delete or modify an NR in PHIS.

NOTE: Appeals related to other noncompliances or enforcement actions (e.g., Notices of Intended Enforcement (NOIEs), Compliance actions, laboratory results) are to be appealed through the applicable supervisory chain of command.

B. VAAFM has adopted this revised this directive to include the regulatory changes in the USDA FSIS final rule, *Establishing a Uniform Time Period Requirement and Clarifying Related Procedures for the Filing of Appeals of Agency Inspection Decisions or Actions*, ([87 FR 63420](#)) and references to 9 CFR 500.9, that requires establishments to appeal inspection decisions or actions within 30 calendar days of receipt of written notification (including e-mail) of the contested decision or action and to also submit any subsequent appeals within 30 calendar days.

C. For the purposes of this directive, “supervisory personnel” refers to any supervisory personnel, at any level, that supervise IPP who conduct verification activities in official establishments or other facilities. This term includes Public Health Veterinarians (SPHVs), Program Supervisors, Food safety Specialist IV Supervisor, Chief of Inspection, Head of Service, and Deputy Director and Director.

KEY POINTS:

- *Provides instruction to supervisory personnel regarding the decision process when responding to industry appeals; and how to address industry appeals submitted orally or in writing*
- *Provides instruction to IPP regarding how to delete an NR in PHIS when an appeal has been granted and how to modify a denied appeal based on instruction from the supervisor*
- *Clarifies that there is a 30-calendar day timeframe in which an initial appeal and subsequent appeals are to be made by establishments.*
- *Provides instructions to IPP and supervisory personnel regarding how to get references to appeals excluded from establishment meeting agendas and weekly meeting MOIs once the appeals have been resolved*

II. CANCELLATION

FSIS Directive 13,000.3, Responding in PHIS to Industry Appeal of Noncompliance Records, Rev. 1, 11/16/16.

III. BACKGROUND

A. FSIS regulations provide that any establishment adversely affected by a decision or action of an inspector or other Agency employee related to an inspection activity may appeal the decision or action. This includes inspection decision including enforcement actions taken in accordance with 9 CFR 500.

NOTE: Appeals are to be submitted to an immediate supervisor for a determination. IPP are not to address appeals except as instructed by their immediate supervisor and explained in this directive.

B. If an establishment decides to appeal an inspection decision it is important that it submit the appeal as soon as possible but no longer than 30 calendar days after receiving written notification of the contested decision or action, as required under 9 CFR 500.9. The appeal is to be submitted to IPP's immediate supervisor, with any supporting information explaining why the appeal should be granted.

C. An inspected establishment or its representative may submit an appeal, verbally or in writing, to the immediate supervisor of any program employee if they believe the establishment has been adversely affected by an applicable decision or action. VAAFMs officials can verbally respond to a verbal appeal unless it is being denied then the response needs to be in writing.

NOTE: IPP are to be aware that the appeals process begins with their immediate supervisor. However, as a means to encourage open communication and good business relationships, the author of the NR should be available and open to discuss any concerns regarding NRs with the establishment. Such discussions are not an appeal or part of the appeals process but instead serve as a means to resolve issues at the lowest possible level.

D. Under 9 CFR 500.9, initial appeals of an applicable decision or action, as well as subsequent appeals of denied appeals through final Agency action, are to be made within 30 calendar days of receiving written notification of the contested decision or action.

E. The following outlines the chain-of-command for appeal decisions concerning NRs:

1. Immediate Supervisor (i.e., Program Supervisor, Food Safety Specialist IV Supervisory, Chief of Inspection if that is the immediate supervisor);
2. Chief of Inspection;
3. Deputy Director/Director FSCP;
4. Secretary of Agriculture, Food and Markets

NOTE: The staffs in the Office of Public Health Science and the Office of Policy and Program Development are not part of the supervisory chain-of-command regarding the resolution of NR appeals. Sample results and regulatory interpretations provided by these staffs can be used to support or refute an NR but are not to be considered as denying or granting an appeal.

IV. IPP RESPONSIBILITIES - WHEN INSTRUCTED BY SUPERVISOR TO MODIFY AN NR IN PHIS

A. Login using normal login procedures

B. Prepare to modify (i.e., edit)

1. On the left menu click “Inspection Verification”;
2. Click the “Select Establishment” option to access the Domestic Inspection page;
3. From the Domestic Inspection page, select the establishment by clicking on the adjacent radio button;
4. Once an establishment is selected, select the “Noncompliance Records” option from the left Navigation Menu under “Inspection Verification”;
5. Locate the NR requiring modification using the Appeal Status column (Appealed by Plant) and click on the “Edit” pencil icon to open the Noncompliance Record (NR) page;
6. If the status of the NR subject to appeal is “NR Completed,” when the NR page opens, the message “This Noncompliance record has been completed” displays at the top of the page with a hyperlink (if the status is “Open” skip to step 13 below);

NOTE: An NR identified as “NR Completed” is “locked” for editing and requires a justification to “unlock.”

7. Select the “Click here” hyperlink to access the “Reason to Edit” on the NR page;
8. Unlock the NR for editing by selecting a justification from the dropdown list (Mandatory field) (i.e., Instructed by supervisor) and entering additional descriptive text within the text box (e.g., appeal granted, deleting per instructions by supervisor);
9. Click the “Unlock” button to save the justification and return to the NR page;

NOTE: The “Noncompliance Finalized?” checkbox will now be blank and the General tab will show the status of the NR as Open

9. The newly added justification is displayed at the bottom of the page, with a message above the grid;
10. If the NR has been finalized, once the Noncompliance Record (NR) page opens, select the noncompliance tab and then the Edit pencil icon to open the Noncompliance page;
11. The following message will be displayed at the top of the Noncompliance page:

“This noncompliance has been finalized. To unlock it, select “Click here” and provide a justification.”
12. Select the “Click here” hyperlink to access the NR page to unlock the finalized Noncompliance;

13. Select from the dropdown list the appropriate reason and enter any additional descriptive text for the reason to Edit NR, and;

14. Click "Unlock" button and now the Noncompliance page can be modified.

C. Modify (i.e. edit) the NR.

1. Once the justification has been entered as above, make the changes to the NR as required by the supervisor;
2. Once all the information has been entered, click "Save" button at the bottom of the page. Then check the "Noncompliance Finalized?" box and click "Save" button again;
3. At the bottom of the Noncompliance page will appear the Justification, Reason to Edit, Edited By, and Edited Date;
4. Click "Cancel" and it will return you to the Noncompliance Record (NR) page. If you select the Noncompliance tag, you will see the "Finalized" status of the noncompliance; and
5. To complete the NR, place a check in the "NR Completed" checkbox and click Save. This returns you to the Noncompliance Records page and the NR status will now display as "Completed".

NOTE: The next line of supervisory chain-of- command is to enter the information for the establishment in PHIS.

D. If IPP observe that an NR number continues to be included on the weekly meeting MOI after the NR appeal has been resolved (e.g., the establishment chooses not to further appeal the NR), they are to inform their immediate supervisor. The supervisor is to follow the instructions in Section VI.F below to resolve the issue.

V. IPP RESPONSIBILITIES - WHEN NOTIFIED BY SUPERVISOR TO DELETE AN NR IN PHIS

A. Login using normal login procedures

B. Prepare to delete

1. Follow the instructions in Section IV. B above, to unlock the NR;
2. Once the NR is unlocked, uncheck the regulations identified on the Noncompliance page; and
3. Click "Save" and then Click "Cancel". This returns the user to the NR page.

C. Delete the NR

1. Click on the "Noncompliances" tab;
2. Select the NR to be deleted, the status should be 'open';
3. Click on the "Trash can." A warning message will appear: "This action will delete the Noncompliance. Are you sure?"

4. In the warning box click “OK” to permanently delete the noncompliance;
NOTE: This action *cannot* be reversed once the noncompliance is deleted
5. In the “Task Calendar,” if the task is “yellow,” it will now show that it is no longer noncompliant;
6. Document that the task is completed by opening it and checking “Inspection Completed” box; and
7. Click “Save” and then close. The task should now be displayed as “green” in the “Task Calendar”

NOTE: Once the electronic copy of the NR is removed from PHIS, IPP are to remove the paper NR with any associated correspondences from the government file system.

VI. SUPERVISORY PERSONNEL - GENERAL RESPONSIBILITIES

A. Supervisory personnel will receive notification of an appeal in one of the following ways:

1. The appeal will appear under the “My Tasks” tab on the supervisors Home Page in PHIS; or
2. The supervisory personnel will receive written (including e-mail) or oral notification from an establishment or the IIC that issued the NR.

B. The supervisor can grant the appeal in its entirety, because they believe that the NR, as written, does not support regulatory noncompliance or they can deny the appeal because they believe that the entire NR, or some portion of it, supports regulatory noncompliance.

NOTE: Granting the appeal does not remove the NR from the PHIS system. It removes the NR from view and no longer allows any changes.

C. Supervisory personnel are to respond promptly to each appeal received by doing the following:

1. Obtain all relevant factual information and review pertinent notices, directives, statutes, and regulations; and
2. Communicate the appeal decision to the establishment and to any IPP involved with the appeal.

D. VAAFM responses to appeals are to be provided as soon as possible, within the suggested timeframes below. However, because each appeal case presents a unique set of facts that require consideration, the response times may vary.

NOTE: As indicated in PHIS, appeals to the EARO, OFO Deputy Assistant Administrator, OFO Assistant Administrator, or the FSIS Administrator are not conducted through PHIS and must be presented in writing directly to those officials.

E. Supervisory personnel are to obtain the following information from the responsible establishment employee:

1. The original NR under appeal;
2. A narrative explanation of why establishment management disagrees with the inspection decision;
3. Any supporting documentation that establishment management believes will assist supervisory personnel in evaluating the situation under appeal;
4. Copies of any previous VAAFM responses; and

5. Any records (e.g., HACCP, SSOP, or prerequisite program) that may contain relevant information on the issue being appealed.

F. Due to the functionality of PHIS, any NR under appeal will continue to be included on the weekly meeting agenda and subsequent MOI until it is resolved and marked “accepted FSIS decision” in PHIS. If IPP observe that an NR number continues to be present on the weekly meeting agenda and MOI after the NR appeal has been resolved (e.g., the establishment chooses not to further appeal the NR), they are to notify their immediate supervisor. The immediate supervisor will then notify the supervisor that is next in the chain-of-command who has not addressed the appeal is to do the following:

1. Login using normal login procedures;
2. Click on “Inspection Verification”;
3. Click on “Select Establishment” and choose an establishment;
4. Click on “Plant Management”;
5. Select the NR in question;
6. Click on the “Response” icon;
7. Select the radio button “Accepted FSIS Decision.” Enter the name of the responsible establishment employee that indicated the establishment no longer wishes to appeal the NR further; and
8. Click on “Save”, click “Submit” and then click “OK.”

NOTE: The responses to all appeals, (e.g. those provided to the establishment) are to be entered into PHIS using the following instructions and those in Section VII below.

G. Supervisors at all levels are to include the following information within their written response to the establishment when addressing an NR appeal.

1. Identify the PHIS NR number and the date the appeal was received;
2. Identify each issue under appeal, the reasons the issue(s) is under appeal and the action requested;
3. For each issue under appeal, provide the following:
 - a. Information, details and facts used to formulate and support the decision;
 - b. Identification of any misapplied policy;
 - c. The final decision; and
 - d. All actions to be taken as a result of the decision.

NOTE: It is important that supervisory personnel include information that supports the decision for granting or denying an appeal. However, they only need to summarize the basis for their decision when entering information into PHIS to enable data analysis of NR appeal outcomes.

VII. SUPERVISORY PERSONNEL - RESPONDING TO AN APPEAL IN PHIS

NOTE: If the establishment appeals in writing, VAAFAM supervisors are to include the information in PHIS either by scanning or including the written document, which could be an email, as an attachment.

A. When establishment appeals an NR but elects not to request access to PHIS (i.e., cannot submit an appeal electronically into PHIS), supervisory personnel are to do the following:

1. Log in using normal login procedures;
2. Click "Inspection Verification" then "Select Establishment";
 - a. From the left menu click "Plant Management";
 - b. Find the NR that was appealed and click the red arrow in "Response" column;
 - c. Click "Appeal";
 - d. Enter the name of the establishment representative that is making the appeal in the text field. If there is an establishment appeal in writing, the supervisor will attach either a scanned copy or if it was electronically sent, the electronic version;
 - e. Click "Save";
 - f. Click "Submit"; and
 - g. At the "Are you sure want to submit?" prompt, click "OK."
3. Grant
 - a. Click "Grant";
 - b. Enter a VAAFAM response regarding why the appeal is being granted in the text field or upload an attachment;
 - c. Click the "Save" button to save the information;
 - d. Click "Submit." A message will display asking "Are you sure want to submit?";

NOTE: The same message is displayed for granting or denying so be sure that the correct radio button is selected.

- e. Click "OK" if you are sure that you want to "Grant" the appeal; and

NOTE: This action cannot be reversed once the appeal is granted.

- f. Notify the IPP author of the NR that the appeal has been granted. IPP will follow the instructions in Section V to delete the NR.

4. Deny

- a. Click “Deny”;
- b. Enter a VAAFM response regarding why the appeal is being denied in the text field or upload an attachment;

NOTE: If an attachment is added, be sure that the radio button still indicates “Deny” and does not default to “Grant”.

- c. Click the “Save” button to save the information;
- d. Click “Submit.” A message will display asking “Are you sure want to submit?”; and
- e. Click “OK.”

NOTE: If supervisory personnel determine that modifications need to be made to the denied NR, they are to notify the IPP author of the NR regarding the necessary modifications. The IPP author of the NR will follow the instructions in Section IV above to make the modifications in PHIS.

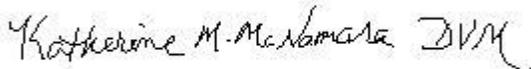
NOTE: When the Director denies an appeal, the following message will be visible at the top of the “Plant Management Response” page:

“The District Manager/Deputy District Manager has denied your appeal. If you wish to continue the appeal process to the next level of supervision, please submit your appeal and any associated documents to the Executive Assistant for Regulatory Operations (EARO) for your district. For appeal guidance, please refer to the [FSIS website](#).”

VIII. QUESTIONS

Refer questions regarding this directive to your immediate supervisor or to the Office of Policy and Program Development through [askFSIS](#) or by telephone at 1-800-233-3935. When submitting a question, complete the [web form](#) and select General Inspection Policy as appropriate as the Inquiry Type.

NOTE: Refer to [FSIS Directive 5620.1](#), *Using askFSIS*, for additional information on submitting questions.



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